



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

PTI/142825

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 06, 2012, under Wis. Stat. § 227.42, Wis. Admin. Code §DCF 201.07(1) and Wis. Stat. § 49.85(4), to review a decision by the Milwaukee County Department of Human Services in regard to issuance of a tax intercept, a hearing was scheduled for October 17, 2012. The Petitioner did not make an appearance on October 17, 2012. On October 18, 2012, the matter was dismissed as abandoned. On December 13, 2012, the Petitioner requested a re-hearing. The request for a re-hearing was granted on December 19, 2012. A hearing was held on January 31, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly issued a tax intercept notice to the Petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Roberta Canady

Milwaukee County Department of Human Services  
1220 W. Vliet Street  
1st Floor, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On October 17, 2011, a decision was issued by DHA in In the Matter of [REDACTED], DHA Case Nos. ML-10-0428, ML-10-0436, ML-10-0437 and ML-11-0030. The decision found the Department of Children and Families (DCF) correctly suspended Wisconsin Shares subsidy payments to [REDACTED] and found that DCF correctly sought to recover an overpayment of child care subsidies in the amount of \$22,405.66 against [REDACTED]
3. [REDACTED] was a licensed family child care provider. The Petitioner was the sole owner, operator and licensee of [REDACTED]. [REDACTED] was incorporated in Wisconsin as a domestic business corporation on November 2, 2006. The Petitioner was listed as the registered agent for [REDACTED].
4. On January 3, 2012, the agency issued a Child Care Provider Repayment Agreement to [REDACTED] requesting repayment of the remaining outstanding balance of \$17,394.52 related to the overpayment action.
5. On February 2, 2012, March 2, 2012 and April 3, 2012, the agency issued Child Care Provider Past Due Notices to [REDACTED]
6. On July 13, 2012, a notice of state tax intercept was issued to the Petitioner informing her of the state's intent to intercept state taxes for her outstanding overpayment balance of \$17,401.32 (\$17,394.52 + \$6.00 processing fee).
7. On July 14, 2012, a Notice of Warrant Docketed was issued to the Petitioner informing her that a warrant had been docketed for collection of the delinquent overpayment debt.
8. On August 6, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.
9. On October 8, 2012, [REDACTED] was administratively dissolved.

### DISCUSSION

The Petitioner's dispute with regard to the tax intercept is with regard to the debtor identified. The Petitioner argues that the outstanding debt which is the subject of the tax intercept is a debt of [REDACTED], and that she, personally, is not liable for the debt and therefore the tax intercept should not be issued against her personally.

The Wisconsin Statutes at §49.155(7m) provide as follows with regard to child care provider overpayments:

(a) The department shall by rule establish policies and procedures permitting the department to do all of the following if a child care provider submits false, misleading, or irregular information to the department or if a child care provider fails to comply with the terms of the program under this section and fails to provide to the satisfaction of the department an explanation for the noncompliance:

1. Recoup payments made to the child care provider.
2. Withhold payments to be made to the child care provider.
3. Impose a forfeiture on the child care provider.

(b) The penalties under par. (a) may be imposed on any child care provider subject to this section. *Any officer, director, or employee of a child care provider that is a corporation, and any member, manager, or employee of a child care provider that is a limited liability company, who holds at least 20 percent of the ownership interest of the corporation or limited liability company and who has control or supervision of or responsibility for operating the child care business, including reporting for and receipt of payments under this section, may be found personally liable for such amounts,*

***including overpayments made under this section, if the business, corporation, or limited liability company is unable to pay such amounts to the department.*** Ownership interest of a corporation or limited liability company includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation or limited liability company of which the corporation or limited liability company is unable to pay such amounts is a wholly owned subsidiary. ***The personal liability of the officers, directors, and employees of a corporation and of the members, managers, and employees of a limited liability company as provided in this paragraph is an independent obligation and survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation or limited liability company.***

As the sole owner, operator and licensee of [REDACTED], the Petitioner is personally liable for the overpayment. The agency's issuance of a tax intercept notice to the Petitioner is proper.

### **CONCLUSIONS OF LAW**

The agency properly issued a tax intercept notice to the Petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition is hereby dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East

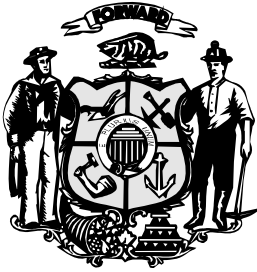
Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of February, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 22, 2013.

Milwaukee County Department of Human Services  
Public Assistance Collection Unit